

PAULINE E. MYERS
Registered Transportation Practitioner
SUITE 420, COLORADO BUILDING
1341 G STREET, N. W.
WASHINGTON, D. C. 20005-3103

(202) 737-2188

November 22, 1985

No. 5-326A013
Date NOV 22 1985
Fee \$ 10.00

ICC Washington, D. C.

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Washington, DC 20423

14849
RECORDATION NO. _____ FILED 1425

NOV 22 1985 - 8 50 AM

INTERSTATE COMMERCE COMMISSION

In Re: Document for Recordation

Dear Mr. Bayne:

I have enclosed an Original and One copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a MORTGAGE OF LOCOMOTIVES, a primary document dated November 14, 1985.

The names and addresses of the parties of this document are as follows:

Mortgagor: Genesee and Wyoming Railroad Company
3846 Retsof Road,
Retsof, New York 14539

Mortgagee: Marine Midland Bank, N.A.
One Marine Midland Plaza
Rochester, New York 14639

A description of the equipment covered by this document follows:

One engine, General Motors, Electro-Motive Division (EMD) Model SW1500 built November 1969, Serial No. 35293, equipped with Model 12-645E diesel engine, Model D32 main generator, Model D77 traction motors. GWRR Number 47.

Two locomotives, General Motors, Electro-Motive Division (EMD) Model GP-38 built 1970, GWRR Number 50 and GWRR Number 51.

A check in the amount of \$10.00 to cover the Recordation Fee is enclosed. Please return the original.

Your usual cooperation in this matter is greatly appreciated.

Yours very truly,

Pauline E. Myers
Pauline E. Myers

PEM/s
Enclosure:

NOV 22 8 43 AM '85
MOTOR OPERATING UNIT
LOC OFFICE OF
THE SECRETARY

Pauline E. Myers
Pauline E. Myers

Interstate Commerce Commission
Washington, D.C. 20423

11/22/85

OFFICE OF THE SECRETARY

Pauline E. Myers
Registered Transp. Practitioner
Suite 420 Colorado Bldg.
1341 G. St. N.W.
Washington, D.C. 20005-3103

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/22/85 at 8:50am , and assigned re-recording number(s). 14849

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

MORTGAGE OF LOCOMOTIVES

14849
NOV 22 1985 - 8 50 AM
INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE, made as of this 14th day of November 1985 by and between GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation with its office and principal place of business at 3846 Retsof Road, Retsof, New York 14539 ("Mortgagor"), and MARINE MIDLAND BANK, N.A., a national banking association, with an office for the transaction of business at One Marine Midland Plaza, Rochester, New York 14639 ("Mortgagee").

WHEREAS, pursuant to the terms of a certain Promissory Note of even date herewith (herein called the "Promissory Note"), the Mortgagee has agreed to lend to the Mortgagor the principal amount of up to Four Hundred Thirty-Five Thousand Dollars (\$435,000.00).

W I T N E S S E T H:

That the Mortgagor does hereby grant, bargain, sell and release unto the Mortgagee, its successors and assigns forever, all and singular, the following described properties, rights and interests and all of the estate, right, title and interest of the Mortgagor in the locomotives and other properties described on Schedule A, annexed hereto, whether now owned or hereafter acquired, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the locomotives described in Schedule A hereto, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of and additions, improvements, accessories, and

accumulations to any and all of said locomotives, including all additions thereto which are now or shall hereafter be incorporated therein, together with all the rents, issues, income, profits and avails thereof, all of which locomotives, other properties, rights and interests hereby transferred, conveyed and mortgaged or intended so to be are hereinafter referred to as the "Locomotives".

TO HAVE AND TO HOLD the above granted and described property unto said Mortgagee, its successors and assigns forever.

PROVIDED, ALWAYS, and upon the express condition that if the Mortgagor, its successors and assigns shall, while no default exists under any of the provisions of Article IV of the Promissory Note, well and timely pay or cause to be paid to the Mortgagee, its successors or assigns, the above mentioned sum of Four Thousand Thirty-Five Thousand Dollars (\$435,000.00), the indebtedness incurred under the Promissory Note, with all interest thereon and any and all additional sums payable under the provisions of the Promissory Note and of this Mortgage, all in accordance with the terms thereof, then this mortgage shall be void, otherwise to remain in full force and effect. If such payment in full is made by the Mortgagor while any such default exists and all such defaults are subsequently corrected by the Mortgagor, the Mortgagor shall be entitled to have this mortgage discharged. This mortgage is given and intended as a collateral and continuing security for the payment of the indebtedness described above incurred, or to be incurred by the

Mortgagor to the Mortgagee whether such indebtedness shall at any time or from time to time have been reduced or paid in full and thereafter increased or reincurred and whether such indebtedness may at any time or from time to time exceed the total obligations incurred by the Mortgagor under the Promissory Note, and no renewal of, or extension of time of payment of the obligation or evidence of the indebtedness or any part thereof, and no agreement not to sue or release or discharge of any persons liable therefor or thereon or release or exchange of other collateral or any act or thing whatsoever, save payment as provided in the next proceeding paragraph of this mortgage, shall diminish, discharge, impair or affect this mortgage or the lien thereof or the security afforded thereby.

AND, The Mortgagor covenants with the Mortgagee that upon the happening of any event of default as defined in Article IV of the Promissory Note, the Mortgagee's rights and remedies with respect to the Locomotives shall be those of a secured party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein. Without in any way requiring notice to be given in the following matter, the Mortgagor agrees that any notice by the Mortgagee of the sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Mortgagor if such notice is mailed by certified or registered mail, postage prepaid, at least ten (10) days prior to such action,

to Mortgagor's address specified above, Attn: President. The Mortgagor agrees to give such further notice of any sale or other disposition to any other person or corporation or to the public generally as it may believe desirable or as may be required by law. The proceeds of any sale, or other disposition after deduction of all expenses of the taking, keeping and sale of the Locomotives including without limitation any and all expenses incurred by the Mortgagee in any legal proceeding which it may institute for the recovery and possession of such Locomotives (herein called "Net Proceeds") shall be applied to the payment of the indebtedness hereby secured and the Mortgagor agrees to pay any deficiency. The Mortgagee may purchase at any such sale in the same manner and to the same effect as a person not interested therein. In no event shall the Mortgagee be required to have the Locomotives present at the place of sale or comply with any other provisions of law respecting foreclosure of liens either in the State of New York or elsewhere.

The Mortgagee is hereby appointed attorney-in-fact of the Mortgagor with full power of substitution to execute and deliver to any purchaser aforesaid, and is hereby vested with full power and authority to make in the name and on behalf of the Mortgagee, a conveyance of the title to each of the Locomotives so sold. In the event of any sale of any of the Locomotives, under any power herein contained, the Mortgagor will, if and when required by the Mortgagee, execute such form of conveyance of the Locomotives as the Mortgagee may direct or approve.

This Mortgage and all covenants, powers, rights herein contained shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

The terms of this Mortgage and all rights and obligations hereunder shall be construed and interpreted in accordance with the laws of the State of New York in which state it has been executed and delivered.

IN WITNESS WHEREOF, each of the parties hereby has caused this instrument to be signed by its duly authorized officers and its corporate seal hereunto affixed as of the day and year first above written.

GENESEE AND WYOMING RAILROAD COMPANY

By: Gerald E. Johnson
Gerald E. Johnson, President

(Corporate Seal)

ATTEST:

J L Erwin
ASS'T. Secretary

MARINE MIDLAND BANK, N.A.

By: E. A. B. [Signature]
ADM Vice President

(Corporate Seal)

ATTEST:

Ralph Mastodonato
Asst. Vice President

SCHEDULE A

1. General Motors, Electro-Motive Division (EMD) Model SW1500 built November 1969 Serial No. 35293, equipped with Model 12-645E diesel engine, Model D32 main generator, Model D77 traction motors.

GWRR Number 47

2. General Motors, Electro-Motive Division (EMD) Model GP-38 built 1970.

GWRR Number 50

GWRR Number 51

STATE OF NEW YORK)
COUNTY OF ~~MONROE~~) SS:
LIVINGSTON

On this 30th day of SEPTEMBER, 1985, before me personally came Gerald E. Johnson, to me personally known, who being by me duly sworn, did depose and say: that he resides in NUNDA, New York; that he is President of Genesee & Wyoming Railroad Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed is said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Gail E. Laurssen
Notary Public

GAIL E. LAURSEN
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires March 30, 1986

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

On this 15th day of November, 1985, before me personally came Emmett B. Boylan, to be personally known, who being by me duly sworn, did depose and say: that he resides in Brighton, New York; that he is Admin. Vice President of Marine Midland Bank, N.A., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed is said corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Elke H. Simons
Notary Public

ELKE H. SIMONS
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires March 30, 1986